IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 9TH JANUARY 2007 / 19TH PAUSHA 1928

WP(C).No. 14515 of 2006(C)

OS.96/2003 of MUNSIFF COURT, MAVELIKKARA
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PETITIONER: PLAINTIFFS
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1. SARALA DEVI, W/O.CHANDRASEKHARAN NAIR, PALLICKAL KIZHAKKEKKARA MURI, THEKKEKKARA VILLAGE.

2. CHANDRASEKHARAN NAIR, DO. DO.

BY ADV. SRI.R.REJI
SMT.SHIVA RAJA RESHMI

RESPONDENTS:

SALIKUTTY BABY, W/O.BABY, KANKALIL BANGALOW, PALLICKAL KIZHAKKEKKARA MURI, THEKKEKKARA VILLAGE.

BY ADV. SRI.B.RENJITHKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1- TRUE COPY OF THE PLAINT IN O.S.96/2003

EXT.P2- TRUE COPY OF THE WRITTEN STATEMENT IN O.S.96/2003

EXT.P3- TRUE COPY OF THE COUNTER CLAIM IN O.S.96/2003

EXT.P4- TRUE COPY OF THE I.A.2618/2005 IN O.S.96/2003

EXT.P5- TRUE COPY OF THE OBJECTION TO I.A.2618/2005 IN O.S.96/03

EXT.P6- TRUE COPY OF THE ORDER IN I.A.2618/2005 IN O.S.96/2003 DATED 22.2.2006

RESPONDENT'S EXHIBIT

EXT.R1(a)- TRUE COPY OF THE JUDGMENT DATED 26.7.2005 IN C.M.A.40/2003 OF THE ADDL. DISTRICT JUDG-I, MAVELIKKARA

(TRUE COPY)

P.A TO JUDGE

M.SASIDHARAN NAMBIAR, J.

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W.P.(C)No.14515 OF 2006

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DATED THIS THE 9th DAY OF JANUARY, 2007

JUDGMENT

Petitioners are plaintiffs 1 and 2 in O.S.96 of 2002 on the file of Munsiff Court, Mavelikkara. Along with the petitioners, two other plaintiffs also jointly instituted the suit. The suit was instituted by plaintiffs in their representative capacity after obtaining permission under Order Rule 8 of Code of Civil Procedure, seeking decree for permanent prohibitory injunction in respect of plaint B schedule contending that water flowing through the channel is necessary for proper cultivation of plaint A schedule property. An order of temporary injunction sought for by the plaintiffs was allowed by the trial court. Though defendants challenged it by filing an appeal, the appeal was dismissed confirming the order of temporary injunction granted till disposal of the suit. Thereafter two of the plaintiffs, viz, petitioners, filed an application under Order VI Rule 17 of Code of Civil Procedure and Order 1 Rule 10(2) of the Code to delete plaintiffs 3 and 4 from party array and to

incorporate a relief of mandatory injunction and damages after incorporating necessary pleadings. Defendants filed objections contending that two plaintiffs alone are not entitled to such amendment of the plaint or they are not entitled to delete the other two plaintiffs from the party array, without their junction and the amendment sought for would alter the nature and character of the suit and therefore it cannot be allowed. Under Ext.P6 order, learned Munsiff dismissed the application. It is challenged in this petition filed under Article 227 of Constitution of India.

2. Learned counsel appearing for the petitioners and respondents were heard. The arguments of learned counsel appearing for petitioners was that as plaintiffs 3 and 4 are not interested in the further conduct of the case, they are not necessary parties to the suit and therefore learned Munsiff should have permitted petitioners to remove plaintiffs 3 and 4 from the party array. It was also argued that a liberal approach is to be taken while considering an application for amendment of the plaint and it was

necessary to amend the plaint, consequent to the obstruction caused to the channel by defendants in spite of the order of injunction and consequent damages caused to the plaintiffs and therefore Ext.P6 order is to be quashed.

3. Learned counsel appearing for respondents argued that two of the plaintiffs alone are not entitled to file an application for amendment of the plaint when the suit itself was filed in their representative capacity and that too after getting permission from the court, they are not entitled to remove two plaintiffs from the party array and get the plaint amended and therefore under Ext.P6 order, learned Munsiff rightly dismissed the application. It was also argued that the amendment sought for in respect of mandatory injunction and damages was available to plaintiffs even before the institution of the suit, as it was contended that obstruction was caused on 5.3.2003 and 6.3.2003 and suit was instituted only on 7.3.2003 and so there is no reason to interfere with Ext.P6 order.

4. It was not disputed that suit was filed by

four plaintiffs stating that apart from the plaintiffs, others who are also enjoying the benefits of water flowing through the channel and all are interested parties and the suit is filed for and on behalf of all those affected parties. The question is whether in such circumstances, after getting an order of temporary injunction, which was confirmed by the appellate court two of the plaintiffs are entitled to remove the other two plaintiffs from the party array without their junction. As rightly pointed out by learned counsel for the respondents, plaintiffs 3 and 4 did not raise a contention that they are not interested in prosecuting the suit. Without that consent or request they cannot be deleted from the party array. If the case of petitioners was that plaintiffs 3 and 4 are not further interested to prosecute the suit with them, proper remedy would have been to transpose plaintiffs 3 and 4, as defendants and not to remove them from the party array, especially when suit was filed on their behalf and that too in representative capacity. Therefore dismissal of that prayer in Ext.P6 does not warrant any interference in exercise of extra ordinary jurisdiction

of this court under Article 227 of Constitution of India.

5. If the plaintiffs 3 and 4 are not removed from the party array or are not transposed as additional defendants, the question is whether two of the plaintiffs are entitled to get the plaint amended of their own, without the junction of plaintiffs 3 and 4. Plaint is that of the four plaintiffs. Two plaintiffs alone are not entitled to get it amended, without the junction of other plaintiffs. Therefore for that reason alone, the application is liable to be dismissed. I do not find any reason to interfere with Ext.P6 order in exercise of extra ordinary jurisdiction of this court under Article 227 of Constitution of India.

Writ petition is dismissed.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-